

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: INCRETIN MIMETICS
PRODUCTS LIABILITY
LITIGATION

MDL Case No.13md2452 AJB (MDD)

As to all related and member cases

ORDER DENYING MOTION TO
FILE UNDER SEAL

[Doc. No. 441]

The matter before the Court is Plaintiffs' motion to file certain documents in support of their Opposition to Defendants' Motion for Summary Judgment under seal. For the following reasons, the motion is DENIED without prejudice.

I. BACKGROUND¹

This multidistrict litigation involves claims for personal injuries and/or wrongful death allegedly caused by four types of incretin-based drugs used to treat diabetes mellitus type 2. Incretin-based drugs contain incretin hormones, which help lower blood sugars by stimulating the production of insulin. Plaintiffs allege that these incretin-based drugs cause pancreatic cancer. Defendants are four pharmaceutical companies that

¹ All factual allegations are taken from the Master Consolidated Complaint. (Doc. No. 202, Ex. A.)

1 manufacture, design, test, package, label, market, advertise, distribute and/or sell the
2 incretin-based drugs at issue.

3 On April 17, 2014, Defendants filed a Motion for Summary Judgment based on
4 federal preemption, arguing Plaintiffs' state-law claims predicated on failure-to-warn
5 theories are preempted by federal law. (Doc. No. 410.) On May 12, 2014, Plaintiffs filed
6 their Response in Opposition. (Doc. No. 443.) Additionally, Plaintiffs seek to file
7 certain documents attached to their Response under seal. (Doc. No. 441). Those
8 documents are currently filed sealed lodged on the Court's docket. (Doc. No. 442.)

9 **II. DISCUSSION**

10 **A. Legal Standard**

11 Courts have historically recognized a "general right to inspect and copy public
12 records and documents, including judicial records and documents." *Nixon v. Warner*
13 *Commc'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978). "Unless a particular court record is
14 one 'traditionally kept secret,' a 'strong presumption in favor of access' is the starting
15 point. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)
16 (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).
17 In order to overcome this strong presumption, a party seeking to seal a judicial record
18 must articulate justifications for sealing that outweigh the public policies favoring
19 disclosure. *See id.* at 1178–79. In turn, the court must "conscientiously balance the
20 competing interests" of the public and the party who seeks to keep certain judicial
21 records secret. *Id.* After considering these interests, if the court decides to seal certain
22 judicial records, it must "base its decision on a compelling reason and articulate the
23 factual basis for its ruling, without relying on hypothesis or conjecture." *Id.* (citing
24 *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)).

25 A strong presumption of access to judicial records applies fully to dispositive
26 pleadings, including motions for summary judgment and related attachments. Thus, to
27 warrant the Court's grant of the request to seal, the party must show "compelling
28 reasons." *Kamakana*, 447 F.3d at 1179. Relevant factors include the "public interest in

1 understanding the judicial process and whether disclosure of the material could result in
 2 improper use . . .” *Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 659 (9th Cir.
 3 2010)(citations omitted). In general, “compelling reasons” sufficient to outweigh the
 4 public's interest in disclosure and justify sealing court records exist when such “court
 5 files might have become a vehicle for improper purposes,” such as the use of records to
 6 gratify private spite, promote public scandal, circulate libelous statements, or release
 7 trade secrets. *Id.*

8 **B. Analysis**

9 In their motion to file under seal, Plaintiffs state that the documents they seek to
 10 seal are either those that have been designated confidential under the Protective Order,
 11 (Doc. No. 246), or are declarations which explicitly discuss the contents of documents so
 12 designated. (Doc. No. 441 at 2.) The documents contain information that are deemed
 13 “sensitive scientific material and business material” that is not disseminated to the public
 14 or industry at large. (*Id.*)

15 However, with such sparse information, the Court is unable to “conscientiously
 16 balance the competing interests of the public and the parties who seeks to keep certain
 17 judicial records secret,” let alone base its decision on a compelling reason and articulate
 18 the factual basis for its ruling. *Kamakana*, 447 F.3d at 1178–79. Though the Parties
 19 themselves may have stipulated to the confidential nature of this information, the
 20 “compelling reasons” standard is invoked even if the motion, or its attachments, were
 21 previously filed under seal or protective order. *Id.* at 1179.


22 Accordingly, Plaintiffs have failed to meet their burden to justify the sealing the
 23 information listed. The Court DENIES the motion to file under seal without prejudice.
 24 Plaintiffs may refile its motion to seal, articulating details that will allow the Court to
 25 make a reasoned decision grounded on a factual basis. Further, as the information
 26 sought to be sealed appears to be solely related to Defendants’ business interests, the
 27 Court recommends the Parties file a joint motion to seal so that Defendants may put forth
 28 their reasons to seal the “confidential” information.

1 **II. CONCLUSION**

2 Plaintiff's motion to file under seal is Denied without prejudice. The Clerk of
3 Court is instructed to maintain the currently sealed lodged proposed documents under
4 seal. (Doc. No. 442.) The Parties must refile a motion to file under seal, addressing the
5 deficiencies noted herein, on or before May 21, 2014. If the Parties fail to do so, or fail
6 to meet their burden of showing compelling reasons to warrant sealing, the Court will
7 order the sealed lodged documents unsealed.

8 IT IS SO ORDERED.

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10 DATED: May 13, 2014

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12 Hon. Anthony J. Battaglia
13 U.S. District Judge
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